XI-UC—78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.3 **सन् 200**1

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANTS:
(In Jail)

1. Sushila Bai, W/o Vikray Dhimar, aged 40 years, by caste Dhimar, R/o Nandi Chowk, Tikarapara, Raipur.

2. Karan Dhimar, S/o Vikray Dhimar, aged about 17 years, by caste Dhimar, resident of Nandi Chowk, Tikarapara, Raipur.

3. Ashok Dewangan, S/o Lakhiram Dewangan, aged 34 years, R/o Dhimarpara, Thana Tikarapara, Raipur.

-Versus-

RESPONDENT:

The State of Chhattisgarh, through the Police Station Purani Basti, Raipur.

(Criminal appeal under Section 374 (2) of the Cr.P.C.)

D.B. : - **Hon'ble Shri L.C. Bhadoo &**
Hon'ble Shri Dhirendra Mishra, JJ.

12-7-2007:-

Shri Adil Minhaj, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Oral judgment dictated on *Dais.* **L.C. Bhadoo, J.** This appeal is directed against the judgment of conviction and order of sentence dated 20th November, 2000 passed by the 6th Additional Sessions Judge, Raipur, in S.T. No.20/2000 whereby learned Additional Sessions Judge after holding the accused/ appellants guilty for commission of offence under Section 302 of the I.P.C., sentenced each of the accused to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 2 months. The case of the prosecution, in brief, is that on 1-11-99 Gopal Singh (since deceased) along with his friend went to his son namely, Veer Singh (PW-1), took his cycle and went to the market. Thereafter, he went to Takrapara from where he returned to his office, took a loan of Rs.1,000/- from his friend Lawrance Lakda (PW-11) who went back to Basna. From there Gopal Singh came to fish market to the shop of Sushila (accused/appellant) and they went to tea stall of PW-3 Asha Bai. They took tea there. From there they came to the house of Sushila Bai (accused/appellant). Karan and Ashok came to the house of Sushila. In the first instance, the accused persons attempted to commit the murder of Gopal Singh by	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

administering Democron, but they were not successful as Gopal Singh threw Democron. Thereafter, the accused persons picked up a coir rope and with the help of coir rope they strangulated Gopal Singh. Thereafter, they called PW-2 Daso with his rickshaw informing him that one patient is to be taken to TB hospital. They took the body of Gopal Singh in that rickshaw to Ring Road. The body was left at a deserted place on Ring Road. The accused persons gave Rs.50/- to rickshaw puller Daso and threatened him that if he will disclose this fact to anybody, then he will be killed. Next day morning i.e. 2nd November, 1999 at about 6 to 6.30 a.m. PW-1 Veer Singh was informed by one Rajesh from whom Veer Singh took bicycle on rent that his cycle and one body of a person are lying on ring road. Thereafter he along with Jambe Singh, father of Rajesh, went near the place where cycle and body were lying. He identified the body. One half filled quarter bottle of liquor was also lying there. Thereafter, he went to the Police Station Azad Chowk and lodged the report Ex.-P/1. FIR Ex.-P/26 was registered on 2-11-99.

Receiving this report, Investigating Officer left for the scene of occurrence, seized the cycle from the place where body of Gopal Singh was lying under Ex.-P/9. After giving notice Ex.-P/36 to the Panchas, the I.O. prepared inquest Ex.-P/37. The body of Gopal Singh

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was sent for post-mortem examination to the Maikahara Hospital Raipur under Ex.-P/39 where Dr. Sanjay Dadu conducted post-mortem, prepared post-mortem report Ex.-P/17. He opined that death was due to asphyxia as a result of strangulation by ligature. Death is homicidal in nature. Merg intimation Ex.-P/40 was given by Sub-Inspector Ambrish Sharma. Site plan Ex.-P/41 where body and cycle were lying was prepared by I.O.

While in the police custody, accused Sushila gave memorandum Ex.-P/7 to the effect that Democron fell on her clothes when attempt was made to administer Democron to Gopal Singh and she can get recovered clothes, in pursuance of that, at her instance, clothes were recovered under Ex.-P/11. Accused Karan, while in the police custody, gave memorandum Ex.-P/8 regarding the place where coir rope was thrown which was used for strangulation, in pursuance of that, under Ex.-P/10 coir rope was seized. Clothes of Karan were seized under Ex.-P/12. Clothes of Ashok were seized under Ex.-P/13. Rickshaw which was used for carrying body of Gopal Singh was seized at the instance of Daso under Ex-P/14. Identification parade of the accused persons was conducted in the presence of Executing Magistrate on 11-11-99 in which Daso (PW-2) identified the accused persons.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Raipur, who in turn committed the case to the Sessions Judge, Raipur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 19 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence. They examined DW-1 Ramdayal Dhimar in their defence.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused persons as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellants has not disputed homicidal death of deceased Gopal Singh. Moreover, PW-9 Dr. Sanjay Kumar Dadu, who conducted post-mortem on the body of deceased Gopal Singh, has stated that on 2-11-99 he was working as Assistant Professor, Forensic Medicine, Medical College Hospital Raipur. On

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that day, he conducted postmortem on the body of the deceased and noticed following injuries:-

(i) abrasion on right side of forehead in the size of 2.5 cm above the midpoint of right supra-orbital margin in the size of 1.0 cm diameter,

(ii) abrasion on outer cantus of right eye in the size of 2.0 cm diameter,

(iii) abrasion present 3.0 cm posterior to lateral border of right orbit in the size of 1.5 cm diameter,

(iv) abrasion present on left chin of tibia in middle in the size of 20 x 1.0 cm,

(v) there was ligature mark around the neck brownish in colour placed on thyroid cartilage which was prominent on right side. It was in centre of neck 5 cm below chin & 5 cm below right side of mastoid & on right side 4 cm below mandible, on the left side 6 cm below top of mastoid and width was 1 to 1.5 cm.

There was haemorrhage in the muscles below ligature mark. Hyoid bone was intact. Both sides of superior carno of thyroid cartilage were broken and clotted blood was present. He opined that

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

cause of death was asphyxia on account of pressing of neck by ligature mark. Death was homicidal in nature. Therefore, in view of the above medical evidence and postmortem report Ex.-P/17, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellants in the crime in question is concerned, in this case, there is no ocular or direct evidence to connect the accused persons with the crime in question. The whole case rests on the circumstantial evidence. Based on circumstantial evidence, as per settled law laid down by the Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220**:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

Having heard learned counsel for the parties, we have perused judgment as well as record of the trial Court. The prosecution has tried to connect the accused persons with the murder of Gopal Singh based on the following circumstances:-

(i) That Gopal Singh was seen alive with accused/appellant Sushila before his death,

(ii) That the body of Gopal Singh was carried by PW-2 Daso in a rickshaw at the instance of the accused persons from the house of Sushila to a deserted place on Ring Road,

(iii) That the coir rope which was used for strangulation of Gopal Singh was recovered at the instance of Karan Dhimar.

First circumstance: To establish this circumstance the prosecution has examined PW-4 Sharda Netam. She has stated that Gopal Singh (since deceased) is known to her since last 9-10 years. He was working in the Telephone Department. He used to supply fish to Sushila who was dealing in selling of fish. Gopal Singh used to visit Sushila even when her husband was alive. He used to visit residence of Sushila. In examination-in-chief, she has stated that about 15 days

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 9 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

prior to Dipawali at about 7-8 p.m. in the evening Gopal Singh came to fish market and took tea on the hotel. Thereafter, Gopal Singh, Sushila, Karan son of Sushila went towards the house of Sushila. In cross-examination, she has stated that Gopal Singh came on first day of the month. He along with Sushila consumed tea, thereafter all the 3 went towards house of Sushila. As per the calendar of the year 1999, Dipawali was on 7th November. In examination in chief, she has stated that about 15 days prior to Dipawali the accused persons and the deceased came together and took tea. In the first instance, the evidence of this witness in examination-in-chief and in cross-examination regarding the day when she saw them together is contradictory. Moreover, the body of Gopal Singh was found next day morning at a deserted place on Ring Road. Visit of Gopal Singh to Sushila was regular. There was nothing abnormal in seeing them together on that day. Moreover, nothing has been brought on record that Sushila or her family members were having any grudge against Gopal or there was any other special reason for accused persons to finish Gopal Singh. As per the settled law, in order to connect the accused persons based on the last seen theory, the gap between time when deceased was seen alive along with the accused and when the dead body was found must be so small that there should not be

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —10—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

possibility of coming any third person in between to commit crime. In other words, there must be proximity between the death and when deceased was seen alive with the accused.

In the present case, as per this witness, she saw the deceased and the accused persons in the evening and body was found next day morning, in between where the deceased went and visited which places there is no evidence. Moreover, as per the settled law, merely on the basis of last seen theory it is unsafe, rather hazardous to connect the accused persons with the crime without establishing involvement of the accused persons in the crime based on other circumstantial evidence.

Second circumstance: To establish this circumstance PW-2 Daso @ Dasru has been examined. He has stated that about 4 months back on first day of the month he was taking his dinner. At about 8 p.m. Ashok (accused) came to his house and said that one serious patient has to be taken to Sarona Hospital and he will pay Rs.50/-. Sarona Hospital is TB Hospital. At that time, he was not having rickshaw, therefore, brought rickshaw of his neighbour Manohar Deep. He went along with Ashok to Tikrapara. He was asked to wait. He waited there for half an hour, thereafter, he said that he is getting late, he

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आदेश पत्रक (पूर्वानुबद्ध)

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is going back and he returned back. Thereafter, Ashok again came with one boy who is present in the Court. Witnesses indicated towards Karan Dhimar. They asked him that passenger is ready. Therefore, he along with these two accused persons went to the house of Sushila with rickshaw. There was shutter and he was asked to park rickshaw there. He had not parked near shutter, therefore, Karan took rickshaw near shutter. Thereafter, all the 3 accused persons opened shutter and brought person from inside the room, his body was covered with cloth. They put him in the rickshaw. He does not know whether he was alive or dead. One accused held that person in rickshaw and boy sat on the front seat. Ashok took cycle. As per their direction, he took rickshaw towards Ring Road. They took rickshaw at a far off distance towards deserted place. There they asked him to stop rickshaw. They brought down the body from rickshaw and made body to sleep on land. The accused persons also left one quarter bottle of wine, one box and cycle there. Ashok paid him Rs.50/- and asked him to run away, therefore, he came to his house. Karan threatened him not to disclose anybody otherwise he will kill him. 8-10 days thereafter he was asked to identify the accused persons in the jail and he identified them there. In cross-examination, he has stated that Ashok and Sushila were known to him

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आदेश पत्रक (पूर्वानुबद्ध)

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earlier. Where body was kept on the road was a deserted place. The accused persons asked him to go, therefore, he left the place. It is incorrect to say that he took rickshaw to the house of Ashok. He never gave such statement to the police that he took rickshaw to the house of Ashok and there he paid him Rs.50/-. Why this fact is recorded in his police case diary statement he does not know. He had not given statement to the police that he first went to Tikrapara where one boy and woman alighted. Why it has been written in the police case diary statement Ex.-D/1 he does not know. He does not know what is the distance between TB Hospital and the place where the body was placed on the road. Statement of this witness under Section 161 Cr.P.C. was recorded on 5-11-99. There is nothing on record to show that how Investigating Officer came to know about this person that he carried the body, the statement was recorded with a delay of 3 days and same has not been explained. This witness borrowed rickshaw of his neighbour Manohar Deep. Even he did not disclose this fact to him. He remained silent till his statement was recorded by the I.O. on 5-11-99. he has stated that accused Karan threatened him not to disclose to anybody. In the natural course of conduct when a person comes to know that dead body is carried on his rickshaw and there is every likelihood that this fact may come to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —13—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

light, therefore, in all probability, as a natural course, at least, he ought to have disclosed to Manohar Deep whose rickshaw he borrowed.

One more circumstance makes the evidence of this witness doubtful i.e. in the Court evidence he has stated that when body was lifted from the rickshaw and put on the road he was paid Rs.50/- and was asked to go away whereas, in the police case diary statement Ex.-D/1 he has stated that when the body was kept on the road, all the 3 accused persons sat in his rickshaw, from there first they came to Tikrapara, one woman and one boy alighted from rickshaw, thereafter, Ashok remained sit in the rickshaw. He took Ashok on the rickshaw near to his house, there Ashok paid him Rs.50/- and threatened not to disclose this fact to anybody. Therefore, there is material contradiction between Court evidence and police case diary statement. In the Court evidence this witness has stated that Rs.50/- was paid to him on the spot where body was left and accused Karan threatened him not to disclose to anybody. The conduct of this witness is also unnatural. When rickshaw was hired by Ashok saying that one patient has to be taken to TB Hospital, instead of that body of a person covered with cloth was taken to a deserted place where body was left near Ring Road, as a natural course of conduct, he ought to have

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -14-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

enquired from them that when the rickshaw was hired to take patient to TB Hospital, why they have brought him to this place, why body of a person has been left in a deserted place that too near Ring Road, about this fact he is totally silent. Therefore, this conduct also creates reasonable doubt in the veracity of the evidence of this witness. From shaky evidence of this witness and for the reasons mentioned above, it is difficult to place explicit reliance on the evidence of this witness. Therefore, the prosecution has failed to establish beyond reasonable doubt that in fact the accused persons carried the body in rickshaw of this witness. Even there is no evidence that in fact body covered with clothes which was carried in his rickshaw was a body of Gopal Singh.

Third circumstance: As far as recovery of coir rope at the instance of accused Karan is concerned, in the first instance, no mark of blood or anything else was found on coir rope in order to connect the accused with the crime in question. In fact, as per the seizure memo, coir rope was seized from garbage dump existing in front of Hardeo Lal Temple on the corner of the road, that was open place, therefore, it cannot be said that same was in exclusive knowledge of the accused, therefore, based on the above recovery, the accused persons cannot be connected with the crime in question.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —15—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

For the foregoing reasons, the prosecution has not been able to establish based on the circumstantial evidence that the accused persons were author of the crime in question. The chain of the circumstances is not complete, rather circumstances based on which the prosecution has tried to connect the accused persons with the crime in question, evidence of those circumstances is shaky, even those circumstances are not fully established. Therefore, conviction of accused/appellants namely, Sushila Bai, Karan Dhimar and Ashok Dewangan for commission of offence under Section 302 of the I.P.C., for committing the murder of Gopal Singh cannot be sustained as the same is not based on any legal established evidence.

In the result, the appeal succeeds. Conviction and sentence imposed upon accused/appellants namely, Sushila Bai, Karan Dhimar and Ashok Dewangan under Section 302 of the I.P.C. are set aside and they are acquitted of the said charge. Accused/appellants Karan Dhimar and Sushila Bai are on bail, their bail bonds are discharged and they are not required to surrender to the bail bonds. However, as per the record, accused Ashok is in detention since 6-11-99, therefore, he be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge